

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

BOBBY L NELSON

PETITIONER

VS.

5:15CV00044 KGB/JTR

WENDY KELLY, Director,
Arkansas Department of Correction

RESPONDENT

RECOMMENDED DISPOSITION

The following Recommended Disposition (“Recommendation”) has been sent to United States District Judge Kristine G. Baker. You may file written objections to all or part of this Recommendation. If you do so, those objections must: (1) specifically explain the factual and/or legal basis for your objection; and (2) be received by the Clerk of this Court within fourteen (14) days of the entry of this Recommendation. The failure to timely file objections may result in waiver of the right to appeal questions of fact.

Mail any objections to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite A149
Little Rock, AR 72201-3325

I. Discussion

Respondent has filed a Motion requesting dismissal of this § 2254 habeas action as successive. *Doc. 7*.

Petitioner also has filed a Motion for Voluntary Dismissal because he was unaware that he had previously filed a habeas action. He requests dismissal of this case, without prejudice, so he can seek authorization from the Eighth Circuit to file a successive habeas action. *See* 28 U.S.C. § 2244(b)(3)(A).

Pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, the Court concludes that Petitioner should be allowed to voluntarily dismiss this action, without prejudice.

II. Conclusion

IT IS THEREFORE RECOMMENDED THAT Petitioner's Motion for Voluntary Dismissal (*doc. 9*) be GRANTED, and that this case be DISMISSED, WITHOUT PREJUDICE. IT IS FURTHER RECOMMENDED THAT Respondent's Motion to Dismiss (*doc. 7*) be DENIED, AS MOOT.

Dated this 7th day of December, 2015.


UNITED STATES MAGISTRATE JUDGE